

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1308 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -
 2. To be referred to the Reporter or not? - :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
-

GORDHANBHAI G. VADODARIYA SINCE DECEASED THROUGH HEIRS

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL FOR MS KJ BRAHMBHATT for Petitioners
MR KC SHAH for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 03/12/1999

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 16-9-1992 of the Collector, Rajkot which was confirmed by the State Government vide order dated 9-12-1993 Annexure 'J' and 'K' respectively and for the directions to the respondent no. 3 to sanction the plans

submitted by the petitioner on 16-7-1990 and also to direct the respondent no. 4 to give permission to the petitioner for construction of the approach road on the Government land for the land allotted to the petitioner from the National Highway.

2. The brief facts of the case are that the petitioner Grodhan Govind was allotted the land admeasuring 5574 sq. yards. out of Survey No. 306 Paiki of village Veraval, Tal. Kotada-Sangani of Rajkot District for the industrial purpose of tyre-tube industries. As per condition no. 6 the plans were got to be approved within a period of six months from the date of passing of the order. As per condition no. 3 the constructions were to be completed as per the plans, within a period of two years. The land was allotted to the petitioner on 30-12-1983. The petitioner met with an accident on 7-1-1984 and he was totally confined to the bed for the long period of more than six months even though he could not recover from the various diseases developed during the treatment. It is stated that later on one of the leg was amputated. The show cause notice dated 20-6-1986 was issued to the allottee regarding breach of the conditions and the time was extended to the allottee by the order dated 22-7-1986 and the construction could not be made even within the extended time. Therefore, another show cause notice dated 30-8-1988 was issued to the allottee and further time was extended by the order dated 5-1-989 and that time was to expire on 4-1-1991. The petitioners submitted the plans to the Factory Inspector on 16-7-1990 and the allottee sent a reminder on 22-8-1990. The allottee again applied to the authority concerned for direction to the Factory Inspector to sanction the plans. But the authority concerned issued another show cause notice on 12-8-1991. The allottee sent his reply on 20-8-1991. The Collector passed the order dated 16-9-1992 Annexure-J holding the allottee responsible for breach of the conditions. Hence, the land was forfeited by the Government. The petitioner filed revision application before the Government and the Government dismissed the Revision Application and confirmed the order of the Collector.

3. Heard the learned counsel for the parties and perused the relevant papers on record. Learned counsel for the petitioner submitted that the condition regarding completion of the construction within stipulated time limit has been declared as "directory" and not "mandatory" in Special Civil Application No. 4809/89. He has also submitted that it was beyond the control of the petitioner to make construction within the stipulated

time as the petitioner met with the accident immediately after the permission was granted and serious complications had arisen during treatment and one leg of the petitioner was amputated and the allottee could not recover fully. Thus, situation and position which was not within the control of the petitioner and hence the petitioner could not complete the construction within the stipulated time limit and further time to complete the construction was extended upto 30-12-1987 and the petitioner could not recover fully due to the complications arose during the treatment and he was not in a position to move from one place to another place. There was drought in the area where the land was situated. Hence, there was shortage of drinking water and water was not available to the petitioner for starting the construction activities within stipulated time limit. As such the construction work could not be started, the respondent no. 2 issued the show cause notice dated 30-8-1988. He has also explained the cause for not starting construction work. The respondents again considered the said reasons by the order dated 5-1-1989 extended the period for two years by charging premium of Rs.2787/-. The petitioner submitted the lay out plans of the building before the respondent no. 3 along with the application dated 16-7-1990 and requested for sanction of the same. The petitioner was required to make approach road after obtaining necessary sanction from the respondent no. 4. Hence, the petitioner moved the application on 16-7-1992 to the respondent no. 4 seeking permission for construction of approach road on the Government land allotted to him from the boundary to National High Way No. 8B. The respondent no. 4 asked the petitioner to send the plans and letter and accordingly the petitioner sent all the necessary documents by a forwarding letter dated 18-3-1991. But the respondent No. 4 did not pass any order for a long time. The petitioner by the letter dated 10-8-1991 requested the respondent no. 2 to direct the respondent no. 3 to sanction the plans submitted by the petitioner. The respondent no. 2 instead of directing the respondent no. 3 to sanction the plans, issued the show cause notice dated 12-8-1991 to the petitioner as to why the land in question should not be vested in the Government as the petitioner had committed breach of the conditions by not completing the construction within the stipulated time limit. The petitioner gave reply dated 20-8-1991 explaining the reasons for not completing the construction work within stipulated time limit and it was stated that there was no fault on his part for not starting the construction work as the respondent no. 3 had not taken any decision on the building plans and the

application submitted by him. The petitioner also sought permission to construct the approach road on the Government land. The petitioner was suffering from serious illness which had arisen due to the accident. The respondent no. 2 without considering the circumstances mentioned in the reply and without dealing with the oral as well as written submissions made by the petitioner passed the order dated 16-9-1992 forfeiting the land in question. The petitioner preferred Revision Application u/s 211 of the Bombay Land Revenue Code. The respondent no. 1 by the order dated 9-12-1993 arbitrarily dismissed the said revision application. It is admitted by the learned counsel for the petitioner that the time for making construction complete was extended to the petitioner for completing the construction. But it was beyond control of the petitioner to make construction complete within the stipulated time limit as stated in the reply to the show cause notice issued by the respondents and the petitioner had already made application on 16-7-1990 to the respondents for sanction of the plans of the building. However, there is no response from the respondents. As such, the petitioner could not start construction without obtaining required sanction from the concerned authority.

4. The petitioner also relied on the decision of this Court dated 5-10-1985 wherein the petitioner of that petition was granted permission on 22-12-1981 and it was found that no fault was with the petitioner of that petition for not making necessary inquiry with the concerned Officer. The authority concerned as well as the Government had not applied mind to the facts and circumstances of the case for not complying with the vital conditions stated in the N.A. Permission and on the ground that it was beyond control of the petitioner to make construction complete within the time limit and the learned counsel for the petitioner has agreed that appropriate and reasonable penalty may be imposed on the petitioner in that regard. In the facts and circumstances of the case, this Court imposed penalty in the sum of Rs.50,000/- for breach of the conditions and the petitioner was directed to complete the construction within three months from the date of the order and the petitioner was directed to pay the penalty within three months. Similarly, the learned counsel for the petitioner upon the instructions received from his client agreed that reasonable amount of penalty be imposed for extending the time. On the other hand, learned State Counsel Mr. K.C. Shah referred to the Government resolution dated 7-10-1977 wherein the policy regarding the terms and conditions governing the applications for

permission or for conversion of the nonagricultural land of new tenure into old tenure and regarding regularization of nonagricultural plots held on the new tenure land and regarding extension of time limited for construction on the nonagricultural plot and the terms and conditions being breach thereof. In para 2.1 it is stated that for the first breach where the building could not be completed within the stipulated time of two years from the date of taking possession and the reasons adduced and the natural calamities and difficulties in procuring the building materials, financial condition and inconveniences the Collector also satisfied that the allottee was not in a position to complete the building after the extension of time was granted then the period for completion of the building may be extended by two years subject to the premium with certain conditions. In respect of second breach mentioned in para 2.2 where the building could not be completed after first breach within the extended time of two years then if it was considered by the Collector that this lapse was occasioned because of the circumstances beyond control of the petitioner. Further the petitioner convinced that he could not construct the build even extension was granted then the Collector may condone breach and extend the period of construction of two years subject to the payment of the premium at the rate mentioned in the said para. Under the circumstances, the period be extended beyond two breaches. In such cases, the plot or land should be resumed. According to the Rules as mentioned in para 3 on the basis of the Government Resolution, the learned counsel for the respondent submitted that the authority concerned can extend the time twice in respect of the breaches and no time can be granted thereafter. In the present case, the time has already been extended twice and on third time breach cannot be condoned and the time cannot be extended. He also pointed out that the plans for the constructions were not submitted within the stipulated time of three months as directed by the authority concerned. Hence, the petitioner is not entitled to for any extension of time even on imposition of some penalty.

5. I have considered the rival contentions of the learned counsel for the parties. It is not disputed that the applicant met with an accident on 7-1-84 and the permission was granted on 30-12-1983 and the allottee met with the accident within seven days on 7-1-84 and that disease remained continued for a long time and one of the leg was amputated and other diseases were also developed during the treatment and the allottee-petitioner could not recover fully. It is also not disputed that the

allottee-petitioner was extended time twice and he also submitted the plans to the Factory Inspector for approval and that plans were not approved. He also sought declaration from the Collector to the Factory Inspector for approval of the plans. The Collector after receiving that application for direction to take drastic steps by issuing a show cause notice within two days as to why the land should not be forfeited to the Government. The petitioner has replied within a week and the Collector has rejected the application of the petitioner only on the ground that there is a policy of extending the time limit for completing the time limit and it was considered by him that it was a continuous breach of the conditions. Hence, the land in question deserves to be forfeited to the Government as surplus. From the facts and circumstances of the case, it appears that it was beyond control of the petitioner due to his illness, scarcity of water in that area to make the construction complete within the stipulated time limit or within the extended time. As this Court has also held the condition as "directory" and not as "mandatory", This Court can grant further time to the petitioner to make construction complete within the time specified hereinafter by this Court subject to the payment of reasonable penalty. In the facts and circumstances of the case, penalty of Rs.25,000/- is imposed as condition for condoning delay occurred in making the construction complete within the time limit.

6. The legal heirs of the petitioner-allottee are permitted to complete the construction within a period of two years after the plans of the building are sanctioned by the competent authority concerned and they shall submit afresh plans of the building to the concerned authority within a period of three months from the date of the order and they will deposit the amount of Rs.25,000/- as penalty within three months before the Collector. In case, the plans are approved, the petitioner would be required to make construction complete within two years from the date of approval of the plans by the authority concerned.

7. Accordingly, this petition is allowed and the orders dated 16-9-1992 passed by the Collector, Rajkot and also the order dated 9-12-1993 passed by the Deputy Secretary (Appeals), Revenue Department, Gujarat State, Annexure "J" and "K" respectively, are hereby quashed and set aside and the legal heirs of the deceased petitioner are required to deposit Rs.25,000/- as penalty within a period of three months to the Collector and they shall submit fresh plans of the building before the authority

concerned within a period of three months from the date of this order and if the respondent no. 3 authority sanctions the plans within a period of three months after proper scrutiny and in accordance with relevant law and rules. The legal heirs of the deceased petitioner will complete construction of the building within a period of two years from the date of sanction of the plans by the authority concerned. D.S. is permitted.

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/JVSatwara/